

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
ACCEPTING CERTAIN PUBLIC IMPROVEMENTS AND AUTHORIZING REDUCTION IN PENAL
SUM OF PUBLIC IMPROVEMENT BOND**

WHEREAS, certain improvements were installed in Parc Metropolitan, Project No. 3061 under and pursuant to the provisions of an improvement contract between the City of Milpitas, a municipal corporation of the State of California, ("City") and RGCCLPO Development Co., LLC, a California Limited Liability Company ((hereafter referred to as "Contractor"); and

WHEREAS, said Contractor as principal, and the American Motorist Insurance Company, as surety, executed a certain faithful performance bond No. 35M 956 829 00 conditioned upon the faithful performance of the provisions of said improvement contract and upon the faithful performance of all improvement work required there under; and

WHEREAS, off-site public improvement (Curtis Avenue) and West and Middle Parks were completed, finally inspected by the City Engineer of the City of Milpitas, and accepted; and a period of one year or more has expired after the date of said acceptance of said improvements; and

WHEREAS, the on-site public water and sewer improvements and East Park have been completed, but the improvement agreement provides that the bond shall extend for a period of one year after the date of said public improvements initial acceptance to cover the warranty period of said improvements under said agreement; and

WHEREAS, the City Engineer has made a final inspection of said improvements and recommends that the City Council of the City of Milpitas accept the same as constructed in accordance with the approved Plans and Specifications; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milpitas as follows:

1. That the off-site public improvement (Curtis Avenue) and West and Middle Parks installed in Tract 9174, Parc Metropolitan, Project No. 3061, be and hereby finally accepted as constructed in accordance with the approved plans and specifications upon recommendation of the City Engineer of the City of Milpitas.
2. That the on-site public water and sewer improvements and East Park installed in Tract 9174, Parc Metropolitan, Project No. 3061, be and hereby initially accepted as constructed in accordance with the approved plans and specifications upon recommendation of the City Engineer of the City of Milpitas.
3. That the penal sum of that certain Faithful Performance Bond No. 35M 956 829 00, furnished by the above-name developer, as principal, and the above-named surety in connection with that certain public improvement agreement for the above designated public improvements, is hereby reduced \$193,475.00 upon request of said principal and surety, said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of said bond.
4. That the penal sum of that certain Labor and Material Bond No. 35M 956 829 00, furnished by the above-name Contractor, as principal, and the above-named surety in connection with that certain public improvement agreement for the above designated public improvements, shall

continue in force. However, if there are no outstanding claims on file with the City Clerk's office after a period of six months after the date of initial acceptance as stated on the Resolution, the said bond may be released per Municipal Code XI-1-17, or April 17, 2007.

5. Provided, however, that nothing herein contained shall in any way be deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the Contractor or his surety, or sureties, by law or by the above referred to improvement contract, save and except those obligations specifically mentioned herein.

PASSED AND ADOPTED this 17TH day of October 2006, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney